

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **NORTHERN DISTRICT OF CALIFORNIA**  
8 **SAN JOSE DIVISION**  
9

10 KEITH STAMPS,  
11 Plaintiff,  
12 v.  
13 RANDY GROUNDS,  
14 Defendant.

Case No. [12-cv-05753-BLF](#)

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL AND  
TERMINATING AS MOOT MOTION  
TO WITHDRAW AS COUNSEL**

[Re: ECF 45]

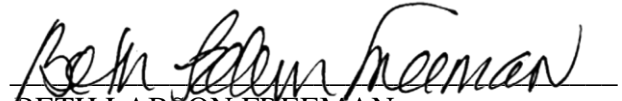
15  
16 On February 3, 2016, Donald Thomas Bergerson, counsel for Petitioner Keith Stamps,  
17 filed a motion to withdraw as counsel. ECF 45. Mr. Bergerson “predicat[ed] his withdrawal  
18 motion on the provision of replacement counsel for the indigent [Petitioner Keith Stamps].” *Id.*  
19 Moreover, Mr. Bergerson stated, “should the Court deny the appointment of counsel, undersigned  
20 asks that the motion [to withdraw] be denied without prejudice[.]” *Id.* The Court thus construes  
21 this as a motion for appointment of counsel embedded in the motion to withdraw.

22 The Sixth Amendment’s right to counsel does not apply in habeas corpus actions. *See*  
23 *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir.), *cert. denied*, 479 U.S. 867 (1986). Unless an  
24 evidentiary hearing is required, the decision to appoint counsel is within the discretion of the  
25 district court. *See Knaubert*, 791 F.2d at 728; *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.),  
26 *cert. denied*, 469 U.S. 838 (1984). An evidentiary hearing does not appear necessary at this time,  
27 and there are no exceptional circumstances to warrant appointment of counsel. Accordingly, the  
28 motion for appointment of counsel is DENIED without prejudice. Additionally, and in light of the

Court's ruling, the motion to withdraw as counsel is TERMINATED AS MOOT.

**IT IS SO ORDERED.**

Dated: February 6, 2017

  
BETH LABSON FREEMAN  
United States District Judge

United States District Court  
Northern District of California